

In re ) Fair Hearing No. 9840  
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Appeal of )

The petitioner appeals the decision by the Department of Social Welfare denying her application for emergency fuel assistance. The issue is whether the petitioner's situation is the result of "unpredictable or extenuating circumstances".

The petitioner and her children are ANFC recipients (\$662.00 a month). They reside in subsidized housing and use electric heat. Their rent is \$60.00 a month.

On or about May 7, 1990, the petitioner met with the district director, who affirmed the earlier decision. The director determined that the petitioner, both in May and

June, would have sufficient income to meet all of her anticipated expenses--including her electric bill. Upon being informed of the district director's decision (notice dated May 7, 1990) the petitioner requested a further review.

The next step of review, prior to Human Service Board fair hearing, is for the district director to discuss the case with the Commissioner of Department of Social Welfare.<sup>2</sup>

Prior to this discussion, on May 9, 1990, the petitioner's caseworker learned that the petitioner had averted a shut-off of her electric service by paying \$90.00 on her April bill. The company told the worker that customers were not shut-off if their past due balance did not exceed \$50.00.<sup>3</sup> On May 14, 1990, the Department sent the petitioner a notice denying emergency fuel assistance "at the Commissioner's level".

A fair hearing was held on May 29, 1990. The petitioner took issue with the Department's calculations of her household expenses for May and June. In particular, the petitioner testified her phone bill was \$20.00 higher than the \$30.00 estimated by the Department. She also maintained that she spent \$15.00 more on food and \$14.00 more on transportation than calculated by the Department.

Included in the petitioner's expenses for May and June was a total of \$206.66 remaining for tuition and registration for the petitioner's children to attend private

school.<sup>4</sup> The petitioner admitted that she had not attempted to negotiate with either the school or the electric company for periodic payments on her arrearage over the summer (when, presumably, her electric bills would run much lower).

ORDER

The Department's decision is affirmed.

REASONS

The "emergency" component of the Department's "fuel assistance" program is described as follows in W.A.M. § 2951:

Eligibility

It is not the intent of these regulations to define a program of entitlement; i.e., a household whose income and resources are within the specified limits and who has a fuel need does not become entitled to a grant, and indeed may be denied. It is the intent of this regulation to provide a framework within which department staff, based on their judgement, may grant assistance to households who face a heating crisis.

In making this judgement staff will consider the individual situation; income, resources, prior applications, and what led to the crisis. Staff will also consider what potential income and resources are available and the extent to which the household can commit all or a portion of such potential toward meeting or partially meeting their current heating need crisis. This potential shall include all members of the household and not simply those bearing direct responsibility for the purchase of fuel.

Within this framework, staff will determine eligibility on the basis of conserving program funds and utilizing client resources to the maximum extent reasonably possible. Staff will make every effort to assist those who are denied eligibility to find alternative solutions to their problems.

W.A.M. § 2956 included the following:

All applicants for emergency assistance must meet

the income and resource eligibility criteria, and demonstrate that their fuel emergency resulted from unpredictable or extenuating circumstances. To make such a determination the Department will complete a careful assessment of past income; uses made of income and resources; relative necessity of such uses including consideration of age, health, and other factors having impact on necessity; and adequacy of planning (past and future) to avoid such emergency. Households will be expected to decline or delay payment for non-essentials in favor of assuring themselves an adequate fuel supply and to make reasonable efforts to conserve fuel to avoid an emergency.

Based on the facts alleged by the petitioner regarding her family's circumstances, it must be concluded that she does not meet the above criteria. It is clear with a minimal rearranging of priorities, the petitioner could easily avert a termination of her electric service without resorting to "emergency assistance". The petitioner receives ANFC of \$662.00 a month plus food stamps. Her rent is \$60.00 a month.

As noted above, the emergency fuel assistance program is not an entitlement--it is highly discretionary. The hearing officer recognized that the petitioner's budget--even with subsidized rent--is extremely tight. However, it is clear from the evidence that the petitioner has sufficient income and resources to prevent the loss of her electric service. Thus, the Department's decision is affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

FOOTNOTES

<sup>1</sup>See W.A.M. § 2957.

<sup>2</sup>id.

<sup>3</sup>The petitioner's building is undergoing a changeover from electric to gas hot water. This will probably lower the petitioner's electric bills during the summer to less than \$25.00 a month.

<sup>4</sup>The petitioner's choice of private school for her children also makes it necessary for her to purchase bus passes for them. This costs the petitioner \$58.00 a month.

Although it is concluded that the petitioner, even with these expenses, has the means to pay off her electric bill, it appears the Department would be within its discretion to question the "necessity" of these expenses before granting emergency fuel assistance. See W.A.M. 9 2956, supra.

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